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VALEANT PHARMACEUTICALS
NORTH AMERICA, LLC

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOSEPH WEINBERG, an individual,

Plaintiff,

vs.

VALEANT PHARMACEUTICALS
NORTH AMERICA, LLC, a Delaware
corporation; and DOES 1 through 50,
inclusive,

Defendant.

CASE NO: 8:15-CV-01260-DOC-KES

**DEFENDANT VALEANT
PHARMACEUTICALS NORTH
AMERICA, LLC'S NOTICE OF
MOTION AND MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, PARTIAL
SUMMARY JUDGMENT**

[Concurrently Filed With Memorandum of
Points and Authorities in Support;
Statement of Uncontroverted Facts and
Conclusions of Law; Declaration of Jerzy
Janeczko; Declaration of Mary Egan;
Declaration of Pamela Lewis; Declaration
of J. Gutierrez; Request for Judicial Notice;
[Proposed] Judgment]

Date: August 8, 2017
Time: 10:00 a.m.
Cttrm: 6D

Action Filed: August 6, 2015
Trial Date: October 10, 2017

**TO ALL PARTIES HEREIN AND TO THEIR ATTORNEYS OF
RECORD:**

PLEASE TAKE NOTICE that on August 8, 2017, at 10:00 a.m., or as soon thereafter as this matter may be heard in Courtroom 6D of the United States District Court, Central District of California, located at Ronald Reagan Federal Building and United States Courthouse, 411 West Fourth Street, Santa Ana, California 92701, Defendant Valeant Pharmaceuticals North America, LLC (“Valeant”) will and hereby does move the Court for summary judgment, or, in the alternative, partial summary judgment as follows:

1. Pursuant to Rule 56 of the Federal Rules of Civil Procedure, granting summary judgment on each and every cause of action and/or count in Plaintiff Joseph Weinberg’s Complaint, in favor of Valeant and against Plaintiff. This Motion is brought on the ground that there is no triable issue of material fact, and Valeant is entitled to judgment as a matter of law, as to each and every cause of action remaining in the Complaint.
2. In the alternative, and also pursuant to Rule 56 of the Federal Rules of Civil Procedure, Valeant moves for partial summary judgment in its favor and against Plaintiff on the following issues:
 - a. Valeant is entitled to judgment in its favor on Plaintiff’s First Cause of Action for Retaliation in Violation of Labor Code section 1102.5(b) because section 1102.5(b) does not apply extraterritorially, Plaintiff is not a California citizen, and all of the alleged conduct occurred outside California.
 - b. Valeant is entitled to judgment in its favor on Plaintiff’s First Cause of Action for Retaliation in Violation of Labor Code section 1102.5(b) because Plaintiff undisputedly did not make any complaint to a government or law enforcement agency, rendering

1 the 2013 version of section 1102.5(b) inapplicable as a matter of
2 law.

- 3 c. Valeant is entitled to judgment in its favor on Plaintiff's First Cause
4 of Action for Retaliation in Violation of Labor Code section
5 1102.5(b) because there was no retaliation as a matter of law, as
6 Plaintiff's office location was shut down permanently, Plaintiff
7 refused to relocate, and his position was eliminated.
- 8 d. Valeant is entitled to judgment in its favor on Plaintiff's Second
9 Cause of Action for Retaliation in Violation of Labor Code section
10 1102.5(c) because section 1102.5(c) does not apply
11 extraterritorially, Plaintiff is not a California citizen, and all of the
12 alleged conduct occurred outside California.
- 13 e. Valeant is entitled to judgment in its favor on Plaintiff's Second
14 Cause of Action for Retaliation in Violation of Labor Code section
15 1102.5(c) because there was no retaliation as a matter of law, as
16 Plaintiff's office location was shut down permanently, Plaintiff
17 refused to relocate, and his position was eliminated.
- 18 f. Valeant is entitled to judgment in its favor on Plaintiff's Ninth
19 Cause of Action for IIED because the claim is barred by the two-
20 year statute of limitations, as Plaintiff resigned on August 5, 2013,
21 effective that same day, and Plaintiff filed this action on August 6,
22 2013, and Plaintiff's effort to end-run the statute of limitations by
23 citing to post-employment denials of COBRA insurance benefits
24 fails because such claim would be preempted by ERISA, and even if
25 it was not preempted, insurance benefits were processed by entirely
26 different individuals.

- 1 g. Valeant is entitled to judgment in its favor on Plaintiff's Ninth
 2 Cause of Action for IIED because Plaintiff has no evidence of any
 3 conduct that was "extreme or outrageous."
 4 h. Valeant is entitled to judgment in its favor on Plaintiff's Tenth
 5 Cause of Action for NIED because the claim is barred by the two-
 6 year statute of limitations, as Plaintiff resigned on August 5, 2013,
 7 effective that same day, and Plaintiff filed this action on August 6,
 8 2013, and Plaintiff's effort to end-run the statute of limitations by
 9 citing to post-employment denials of COBRA insurance benefits
 10 fails because such claim would be preempted by ERISA, and even if
 11 it was not preempted, insurance benefits were processed by entirely
 12 different individuals.
 13 i. Valeant is entitled to judgment in its favor on Plaintiff's Tenth
 14 Cause of Action for NIED because the claim is barred by worker's
 15 compensation exclusivity.
 16 j. Valeant is entitled to judgment in its favor on Plaintiff's Tenth
 17 Cause of Action for NIED because the undisputed facts show the
 18 claim is based on intentional – not negligent – conduct.

19 This Motion is made following the conference of counsel pursuant to Local Rule
 20 7-3, which took place in person on May 30, 2017. Declaration of Jill Gutierrez, ¶ 2.

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1 This motion is based on this Notice of Motion and Motion, Memorandum of
2 Points and Authorities in Support of Motion for Summary Judgment, Statement of
3 Uncontroverted Facts and Conclusions of Law, Declarations of Jill Gutierrez, Jerzy
4 Janeczko, Mary Egan, and Pamela Lewis, Request for Judicial Notice, as well as the
5 entire record in this action, and any further papers, evidence and arguments presented by
6 Valeant.

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8 DATED: June 22, 2017

DORSEY & WHITNEY LLP

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10 By: /s/ Jill A. Gutierrez
11 Jessica L. Linehan
12 Jill A. Gutierrez
13 Attorneys for Defendant
14 VALEANT PHARMACEUTICALS NORTH
15 AMERICA, LLC
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CERTIFICATE OF SERVICE

All Case Participants are registered for the USDC CM/ECF System

Joseph Weinberg, etc. v. Valeant Pharmaceuticals International, et al.
Central District of California Case Number 8:15-cv-01260-DOC-KES

**DEFENDANT VALEANT PHARMACEUTICALS NORTH AMERICA, LLC'S
NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT**

I hereby certify that on June 23, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Central District by using the CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

By: /s/ Jill A. Gutierrez
Jill A. Gutierrez